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10 IN THE UNITED STATES DISTRICT COURT
11 FOR THE EASTERN DISTRICT OF WASHINGTON
12 AT SPOKANE

13 AAA Cabinets & Millworks, Inc., a
Washington For-Profit Company; and
14 Timothy Stewart, an individual,

Plaintiffs,

15 vs.

16 AMCO Insurance Company, an Iowa
For-Profit Company,

17 Defendant.

CASE NO. 2:20-cv-318

**18 COMPLAINT FOR BREACH OF
CONTRACT AND
DECLARATORY JUDGMENT**

19 Plaintiffs AAA Cabinets & Millworks, Inc. (“AAA Cabinets”) and Timothy
20 Stewart (“Mr. Stewart”), by and through their undersigned counsel, bring this action

COMPLAINT - 1

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1 for a declaratory judgment and for damages for breach of contract against Defendant
 2 AMCO Insurance Company (“AMCO”), an Iowa company that issued policies of
 3 insurance to AAA Cabinets in the State of Washington. AAA Cabinets and Mr.
 4 Stewart are referred to collectively as “AAA Cabinets.” For its Complaint against
 5 AMCO, AAA Cabinets alleges as follows:

6 I. NATURE OF THE ACTION

7 1. This is an action for a declaratory judgment and for damages for breach
 8 of contract relating to multiple policies of insurance that AMCO issued to AAA
 9 Cabinets. Both AAA Cabinets and Timothy Stewart, the Chief Executive Officer of
 10 AAA Cabinets, are Insureds under the policies. The policies require AMCO to
 11 defend its policyholders against claims brought by third parties that give rise to
 12 potential coverage under the policy.

13 2. On August 28, 2019, AAA Cabinets and Timothy Stewart were sued
 14 by Kitchen Cabinet Manufacturers’ Association (“KCMA”) in the United States
 15 District Court for the Eastern District of Washington. In that lawsuit (the “KCMA
 16 Lawsuit”), KCMA alleged various causes of action, including claims that AAA
 17 Cabinets had infringed KCMA’s intellectual property rights in advertising by AAA
 18 Cabinets. Both AAA Cabinets and Timothy Stewart were named as defendants in
 19 the KCMA Lawsuit.

1 3. The conduct at issue in the KCMA Lawsuit was not intentional. AAA
2 Cabinets accidentally affixed a small number of KCMA stickers to cabinets on a
3 single construction project because of a misunderstanding about the certification
4 required by the project. AAA Cabinets had purchased the stickers when the company
5 was KCMA certified, and Mr. Stewart believed at the time that AAA Cabinets was
6 still licensed to use the stickers.

7 4. The Policies provide coverage for various types of third-party claims,
8 including claims for “Personal and Advertising Injury” allegedly caused by an
9 insured. Under one or more of the Policies, AMCO had a duty to defend AAA
10 Cabinets and Mr. Stewart in the KCMA Lawsuit.

11 5. As set forth below, AMCO failed to conduct a proper and timely
12 investigation, and unlawfully refused to defend AAA Cabinets and Mr. Stewart in
13 the KCMA Lawsuit. As a result, AAA Cabinets was forced to incur legal fees and
14 other defense costs that were necessary to defend AAA Cabinets and Mr. Stewart in
15 the KCMA Lawsuit, and AAA Cabinets was forced to settle the KCMA Lawsuit
16 without the protection and assistance that AMCO was obligated to provide. AAA
17 Cabinets is now required to file this lawsuit to obtain the benefit of the AMCO
18 Policies.

II. PARTIES, JURISDICTION AND VENUE

6. Plaintiff AAA Cabinet & Millworks Inc. is a Washington for-profit Corporation located at 11403 West 21st Ave., Airway Heights, Washington 99001.

7. Plaintiff Timothy Stewart is an individual who resides in Spokane, Washington.

8. Defendant AMCO Insurance Company is an Iowa for-profit Corporation with its home office located at 1100 Locust Street, Des Moines, Iowa, 50391.

9. This Court has jurisdiction over this action pursuant to 28 U.S.C. §1332, as this action is between citizens of this State and a citizen of a foreign state that is not domiciled in Washington, and the matter in controversy exceeds the sum or value of \$75,000, exclusive of interest and costs. This Court has jurisdiction over the claim for declaratory relief under 28 U.S.C. § 2201 (the Declaratory Judgment Act).

10. Venue is proper in this district because AAA Cabinet's cause of action arose in Spokane County, where the Policies were issued by AMCO.

11. The Court has personal jurisdiction over AMCO pursuant to Rule 4 of the Federal Rules of Civil Procedure and RCW § 4.28.185(1)(d), which states that any person who “contract[s] to insure any person, property, or risk located within

1 this State at the time of contracting” thereby submits “to the jurisdiction of the courts
 2 of this State as to any action arising from [the insurance contract].”

3 **III. BACKGROUND**

4 **A. The AMCO Policies**

5 12. AMCO issued multiple insurance policies that include coverage for
 6 third-party claims against AAA Cabinets and additional insureds. The AMCO
 7 insurance policies that potentially cover the claims made in the KCMA Lawsuit
 8 include policy numbers ACP GLAO 3008327080, ACP GLAO 3018327080, and
 9 ACP GLAO 3028327080 (the “CGL Policies”) and ACP CAA 3008327080, ACP
 10 CAA 301832708, and ACP CAA 302832708 (the “Umbrella Policies”). The CGL
 11 Policies and the Umbrella Policies are collectively referred to herein as the
 12 “Policies” or the “AMCO Policies.” Each Policy was initially effective January 2,
 13 2018, and renewed annually. The current policies are in force through January 2,
 14 2021. Both AAA Cabinets and Mr. Stewart are Insureds under the Policies.

15 13. The Policies do not differ materially in their coverage. Attached as
 16 **Exhibit A** is the AMCO Commercial General Liability policy for the period January
 17 2, 2018 to January 2, 2019, Policy Number ACP GLAO 3008327080 (“2018
 18 Policy”).

19 14. The Policies provide coverage for various types of third-party claims,
 20 including claims for “Personal and Advertising Injury” allegedly caused by an

1 Insured. Under one or more of the Policies, AMCO had a duty to defend AAA
 2 Cabinets and Mr. Stewart in the KCMA Lawsuit.

3 **B. The KCMA Lawsuit**

4 15. According to the complaint in the KCMA Lawsuit, KCMA is an
 5 association of furniture manufacturers whose business involves certifying the quality
 6 of its members' products, and licensing to its members the right to advertise that
 7 they are KCMA Certified and to use KCMA's intellectual property to advertise
 8 members' products.

9 16. In the KCMA Lawsuit, KCMA alleged that AAA Cabinets infringed
 10 KCMA's intellectual property rights in advertising for AAA Cabinets' products. For
 11 example, the KCMA Lawsuit alleges that AAA Cabinets "used counterfeit
 12 certification seals bearing the counterfeit KCMA Marks on their cabinets **and to**
 13 **advertise and promote their cabinets.**" *Kitchen Cabinet Manufacturers Association*
 14 v. *AAA Cabinets and Millworks, Inc.*, U.S. District Court, Eastern District of
 15 Washington, Cause No. 2:19-cv-0291-SMJ, First Amended Complaint, Dkt. 12, Ex.
 16 1, ("KCMA Complaint") at ¶ 58 (emphasis added). A copy of the KCMA Complaint
 17 is attached hereto as **Exhibit B**.

18 17. The KCMA Complaint repeatedly alleges that AAA Cabinets and Mr.
 19 Stewart used KCMA's intellectual property to advertise AAA Cabinets to "the
 20 public" and "potential customers." KCMA Complaint ¶¶ 6, 35, 50, 59.

1 18. In addition to alleging that AAA Cabinets was unlawfully using
 2 KCMA's intellectual property in advertising, KCMA also alleged that the use
 3 disparaged KCMA and its goods, products or services because the furniture that
 4 AAA Cabinets was advertising as KCMA Certified was allegedly of poor quality.
 5 The KCMA Complaint alleged that KCMA's half-century of carefully curating and
 6 advertising its certifications has allowed KCMA's marks and slogans to attain "a
 7 national and global reputation for technical expertise and integrity" which was being
 8 harmed by AAA Cabinets' advertising activities. *See, e.g.*, KCMA Complaint at ¶¶
 9 21, 59, 61, 74. For example, that KCMA Complaint alleges that AAA Cabinets' use
 10 of the KCMA intellectual property "will irreparably injure and damage KCMA and
 11 the goodwill and reputation symbolized by the KCMA Marks." KCMA Complaint
 12 at ¶ 61. The KCMA Complaint further alleges: "Unless Defendants are enjoined by
 13 this Court from doing so, KCMA will continue to suffer irreparable harm and injury
 14 to its goodwill and reputation." KCMA Complaint at ¶ 74.

15 19. In short, KCMA alleged that AAA Cabinets engaged in a variety of
 16 advertising acts that violated KCMA's intellectual property rights, unjustly enriched
 17 AAA Cabinets, disparaged KCMA and its goods and services, and caused other
 18 advertising injuries to KCMA.

19 20. The KCMA Complaint alleges intentional conduct by AAA Cabinets,
 20 but the readily available evidence shows that the dispute arose from an unintentional

1 misunderstanding. During the time period when AAA Cabinets was certified by
 2 KCMA, AAA Cabinets purchased a large number of KCMA stickers. As the result
 3 of a misunderstanding, Mr. Stewart instructed an employee of AAA Cabinets to
 4 place KCMA stickers on several cabinets built for a nursing home project (the
 5 “Newport Project”). KCMA certification was not required for the Newport Project,
 6 and the stickers were placed on the cabinets as the result of a mistake. Although the
 7 Newport Project did not require KCMA certification, Mr. Stewart believed at the
 8 time that AAA Cabinets was still licensed to use the stickers purchased from KCMA.

9 21. One of the main issues in the KCMA Lawsuit was that neither party
 10 could produce a copy of the license agreement between AAA Cabinets and KCMA.
 11 Because neither party had a copy of the license agreement, it was not clear whether
 12 AAA Cabinets’ license to use the KCMA stickers had expired.

13 22. The KCMA Lawsuit was resolved when AAA Cabinets was able to
 14 convince KCMA that it had not engaged in any intentional misuse of the stickers,
 15 that KCMA stickers were not required for the Newport Project, and that AAA
 16 Cabinets had placed the KCMA stickers on several cabinets as the result of a
 17 misunderstanding.

18 23. AAA Cabinets and KCMA amicably resolved the KCMA Lawsuit.
 19 After resolving the matter, AAA Cabinets and KCMA filed a joint motion to dismiss
 20 the lawsuit with prejudice. The joint motion included a joint statement by the parties

1 that AAA Cabinets' use of the KCMA stickers was the result of "an internal
 2 misunderstanding." *Kitchen Cabinet Manufacturers Association v. AAA Cabinets*
 3 and Millworks, Inc.

4 US District Court, Eastern District of Washington, Cause No.
 5 2:19-cv-0291-SMJ, Joint Motion to Dismiss with Prejudice, ECF No. 62, at ¶ 3. A
 6 copy of the Joint Motion to Dismiss with Prejudice is attached hereto as **Exhibit C**.

7 24. When investigating the claim made by KCMA against its insureds,
 8 AMCO failed to take into account extrinsic evidence that was readily available to
 9 AMCO.

10 25. AAA Cabinets incurred significant legal fees and other defense costs in
 11 defending itself and Mr. Stewart in connection with the KCMA Lawsuit.

12 **C. The Claims Asserted in the KCMA Lawsuit Were Covered by the
 13 AMCO Policies**

14 26. The AMCO Policies include coverage for "Personal and Advertising
 15 Injury." The Policies require AMCO to pay "those sums that the insured becomes
 16 legally obligated to pay as damages because of 'personal and advertising injury' to
 17 which this insurance applies." *See* Exhibit A (2018 Policy at Section I.B.1.a., at
 18 page 6 of 16). The Policies also make clear that AMCO has a "duty to defend the
 19 insured against any 'suit' seeking damages" for alleged advertising injuries. *See*
 20 Exhibit A (2018 Policy at Section V.1.a, at page 13 of 16).

1 27. The AMCO Policies define “Advertisement” to mean a “notice that is
2 broadcast or published to the general public or specified market segments about [the
3 insured’] goods, products, or services for the purpose of attracting customer or
4 supporters.” *Id.*

5 28. The Policies define “Personal and advertising injury” to include
6 “injury, including consequential ‘bodily injury’, arising out of one or more of the
7 following offenses:

8 | * * *

11 | * * *

- f. The use of another's advertising idea in your 'advertisement'; or
- g. Infringing upon another's copyright, trade dress or slogan in your 'advertisement'”.

14 29. The Complaint in the KCMA Lawsuit alleged misconduct by AAA
15 Cabinets that, if proven, would meet the definition of “Personal and advertising
16 injury” in the AMCO Policies.

17 30. The AMCO Policies state that AAA Cabinets' "executive officers" and
18 directors are insureds." See Exhibit A (2018 Policy at II.1.a., at page 9 of 16).

D. AMCO's Defective Investigation

1 31. By letter dated January 31, 2020, counsel for AAA Cabinets notified
 2 AMCO of the KCMA Lawsuit and requested that AMCO confirm coverage and
 3 provide a defense. A copy of the KCMA Complaint in the KCMA Lawsuit was
 4 attached to the letter.

5 32. The KCMA Complaint alleges, among other things, that KCMA is
 6 entitled to a judgment for money damages and other remedies based on various legal
 7 theories. Among other relevant allegations, the KCMA Complaint alleges that AAA
 8 Cabinets and Mr. Stewart “used the counterfeit certification seals bearing the
 9 counterfeit KCMA Marks on their cabinets ***and to advertise and promote their***
 10 ***cabinets.*** *See* Exhibit B (KCMA Complaint ¶ 58) (emphasis added). The KCMA
 11 Complaint alleges that KCMA was seeking an injunction restraining AAA from such
 12 “advertising.” *Id.* at ¶ 114. Similarly, the KCMA Complaint asserts that AAA’s
 13 alleged actions “reflect adversely on KCMA” and that KCMA “will suffer
 14 irreparable harm to its trade reputation and goodwill” if the conduct continues. *Id.* at
 15 ¶ 90, 94. It further alleges that KCMA is suffering “irreparable damage” to the
 16 “business and reputation of KCMA.” *Id.* at ¶ 114. These allegations and others show
 17 that KCMA’s claims are at least potentially covered by the Policies.

18 33. Under Washington Law, AMCO had a duty to promptly investigate and
 19 respond to AAA Cabinets’ notice of the KCMA Lawsuit.

1 34. AMCO had a duty to provide a defense in the KCMA Lawsuit if the
2 claims were “potentially” or “conceivably” covered by the Policies, and AMCO was
3 required to resolve any doubt or ambiguity in favor of the insureds.

4 35. In making its coverage determination, AMCO had a duty to look
5 beyond the allegations of the KCMA Complaint and consider extrinsic facts known
6 by or readily ascertainable to AMCO.

7 36. AMCO did not respond to AAA Cabinets’ January 31, 2020, letter.

8 37. On February 19, 2020, AAA Cabinets sent a follow-up letter to AMCO.
9 Again, AMCO did not respond.

10 38. AMCO did not assign a claims representative until March 13, 2020,
11 more than 40 days after AAA Cabinets notified AMCO of the KCMA Lawsuit.

12 39. On or around March 13, 2020, counsel for AAA Cabinets had a phone
13 call with an AMCO claims representative during which counsel for AAA Cabinets
14 summarized important facts relating to the KCMA Lawsuit and coverage under the
15 AMCO Policies. Among other things, counsel for AAA Cabinets explained that
16 while the Complaint made a variety of allegations suggesting intentional
17 wrongdoing by AAA Cabinets, the actual facts involved an accident and a
18 misunderstanding, rather than intentional misconduct.

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20

1 40. On March 30, 2020, 59 days after counsel for AAA Cabinets sent a
 2 copy of the KCMA Complaint to AMCO, a claims representative for AMCO sent a
 3 letter to counsel for AAA Cabinets. The letter states in part:

4 ... Nationwide has no duty to defend or indemnify AAA Cabinet &
 5 Millwork, Inc. in the lawsuit filed against it by Kitchen Cabinet
 Manufacturers Association.

6 Nationwide reserves the right to modify and amend its coverage
 7 position pending its continuing investigation. In reserving its rights to
 8 modify and amend its coverage position, Nationwide reserves the right
 9 to withdraw from your defense in the event its investigation reveals that
 the Nationwide Policies do not provide coverage. Nationwide further
 reserves the right to commence a declaratory judgment action to
 determine the extent of its obligations, if any, under the Nationwide
 Policy.

10 The March 30, 2020, letter further states: "Please be advised that the portions of the
 11 policy referenced in this letter are not meant to be representative of all portions of
 12 the policy that may apply to this loss."

13 41. On April 23, 2020, a different AMCO claims representative sent a letter
 14 to counsel for AAA Cabinets. That letter states in part: "For reasons explained more
 15 fully below, please be advised there is no coverage under the AMCO policies for
 16 defense or indemnity of AAA Cabinets & Millworks, INC and Timothy Stewart."
 17 Like the March 30 letter, the April 23 letter also failed to contain a final or exhaustive
 18 analysis of coverage. The April 23 letter states in part: "AMCO reserves all of its
 19 rights under the policies and applicable law. By specifying certain terms and
 20 conditions which limit or exclude coverage, we waive no others, and specifically

1 reserve all of AMCO’s rights under all policy terms, conditions, limitations,
 2 definitions and exclusions and under applicable law.”

3 42. On May 14, 2020, AAA Cabinets responded to AMCO’s denial letters
 4 discussing coverage for the KCMA Lawsuit, and explaining that the allegations
 5 made in the KCMA Complaint gave rise to a duty to defend because—at the very
 6 least—those claims were “potentially” covered by the Policies.

7 43. AMCO did not defend under a reservation of rights or file a declaratory
 8 judgment action to have a court determine if AMCO’s coverage determination was
 9 correct.

10 44. After AAA Cabinets demonstrated that its actions were the result of a
 11 misunderstanding, and were not intentional, KCMA agreed to an amicable resolution
 12 of the KCMA Lawsuit. On July 6, 2020, KCMA and AAA Cabinets filed a joint
 13 motion to dismiss the KCMA Complaint with prejudice.

14 45. Almost one month later, on August 4, 2020, counsel for AMCO sent a
 15 letter to AAA Cabinets. This letter purported to confirm receipt of the KCMA
 16 Complaint, a copy of which had been sent to AMCO on January 31, 2020.

17 46. AMCO’s purported reason for sending the August 4, 2020 letter was to
 18 reiterate AMCO’s earlier denials of coverage and refusal to defend AAA Cabinets
 19 and Timothy Stewart based on the KCMA Complaint. In fact, AMCO’s August 4,
 20 2020 letter was a belated effort to justify its earlier denials of coverage and AMCO’s

1 failure to conduct a timely and thorough investigation of the claims asserted by
2 KCMA.

3 47. If AMCO had conducted a thorough and timely investigation of the
4 claims alleged in the KCMA Lawsuit, including considering evidence extraneous to
5 the KCMA Complaint, which was readily available to and, in fact, known to AMCO,
6 then AMCO would have recognized its duty to defend AAA Cabinets and Timothy
7 Stewart in the KCMA Lawsuit.

8 48. At a minimum, AMCO was required to defend AAA Cabinets and Mr.
9 Stewart under a reservation or rights, and to commence a declaratory judgment
10 action to have a court decide whether coverage or potential coverage existed under
11 the Policies.

12 49. Because AMCO failed to defend, AAA Cabinets incurred significant
13 legal fees and other defense costs in defending the KCMA Lawsuit.

14 50. In addition, AAA Cabinets has now been forced to incur the cost of
15 filing this action in order to obtain the benefit of the AMCO Policies.

IV. CLAIMS

FIRST CAUSE OF ACTION DECLARATORY JUDGMENT

52. AAA Cabinets seeks a declaration from this Court that AMCO was legally obligated under the Policies and under Washington State law to defend AAA Cabinets and Timothy Stewart in the KCMA Lawsuit.

SECOND CAUSE OF ACTION BREACH OF CONTRACT

53. AAA Cabinets repeats the allegations above and incorporates them as if fully set forth herein.

54. The Policies are insurance policies under which AMCO was paid premiums in exchange for their agreement to indemnify AAA Cabinets and other Insureds for losses covered by the Policies, and to defend the Insureds against third-party claims for losses that are covered or potentially covered by the Policies.

55. The KCMA Lawsuit triggered AMCO's duty to defend AAA Cabinets and Mr. Stewart in the KCMA Lawsuit.

56. AMCO breached the Policies by failing to defend AAA Cabinets and Mr. Stewart in the KCMA Lawsuit.

57. AMCO's breaches of the Policies has caused AAA Cabinets to incur damages, including, without limitation, attorney fees and other defense costs, for which AMCO is liable in an amount to be established at trial.

THIRD CAUSE OF ACTION
FEES AND COSTS UNDER *OLYMPIC STEAMSHIP*

58. AAA Cabinets repeats the allegations above and incorporates them as if fully set forth herein.

59. AMCO is liable under *Olympic Steamship Co., Inc. v. Centennial Ins. Co.*, 117 Wn.2d 37, 811 P.2d 673 (1991) for the legal fees and other expenses incurred by AAA Cabinets to obtain the benefit of the AMCO Policies.

V. PRAYER FOR RELIEF

WHEREFORE, AAA Cabinets requests that the Court judgment in its favor and against AMCO as follows:

A. Enter a declaratory judgment in favor of AAA Cabinets and Timothy Stewart and against AMCO on Count 1 of this Complaint; and

B. Enter judgment in favor of AAA Cabinets and against AMCO on Count II of the Complaint, including an award damages for breach of contract in an amount to be proven at trial;

C. Award AAA Cabinets its attorney fees and expenses reasonably incurred to obtain the benefit of the Policies;

D. Award prejudgment interest to AAA Cabinets and against AMCO at the statutory rate in Washington State to compensate AAA Cabinets for the loss of

- 1 use of funds caused by AMCO's wrongful refusal to defend AAA Cabinets and Mr.
- 2 Stewart in the KCMA Lawsuit; and

3 E. Award AAA Cabinets and Timothy Stewart such other and further
4 relief as this Court deems just and appropriate.

VI. JURY DEMAND

6 AAA Cabinets hereby demands trial by jury on all issues so triable.

7 DATED this 4th day of September,
8 2020.

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